

Date Issued: January 19, 2017

File No. SSAB 13-2016

Indexed as: BCSSAB 13 (1) 2016

IN THE MATTER OF THE SAFETY STANDARDS ACT, SBC 2003, Chapter 39
AND IN THE MATTER OF
an Appeal to the British Columbia Safety Standard Appeal Board

BETWEEN: A MECHANICAL ENGINEER Appellant

AND: BRITISH COLUMBIA SAFETY AUTHORITY Respondent

REASONS FOR DECISION

Safety Standards Appeal Board Panel:

Jeffrey Hand
Emily Drown
Ted Simmons

On Behalf of the Appellant:

The Appellant

Counsel for British Columbia Safety Authority:

Kimberley Fenwick

INTRODUCTION

[1] This is an appeal from a Decision of the Provincial Safety Manager, brought pursuant to Section 49(1) of the *Safety Standards Act* (the "*Act*"), which held that the Appellant did not meet the necessary requirements to obtain a certificate of qualification as a Class A Electrical Field Safety Representative ("FSR").

[2] The Safety Manager says that applicants for the FSR certification must hold a University Degree in Electrical Engineering and have two years of experience satisfactory to the Safety Manager as per the requirements of Section 10(1) of the Electrical Safety Regulations ("ESR").

[3] The Appellant says his University Degree in Mechanical Engineering and his practical experience in the field of electrical power generation meets the requirements of Section 10(1).

ISSUE

1. Did the Provincial Safety Manager properly interpret the requirements of Section 10(1) of the ESR?

FACTS

[4] The Appellant holds a Bachelor Degree in Mechanical Engineering, granted by the University of Sussex dated July 16, 1996. For the past 20 years the Appellant has been working with A Company Inc. in its rail and transit engineering/infrastructure division where he has been involved in the design and construction of traction power sub-stations. His primary work experience is in the field of electrical engineering.

[5] The Appellant is a member of the Association of Professional Engineers and Geoscientists of British Columbia ("APEGBC"). Since February 2009 APEGBC has allowed the Appellant to designate himself as practicing in the discipline of electrical engineering.

[6] In June, 2016, the Appellant successfully completed a course on the Canadian Electrical Code, Part 1, offered through British Columbia Institute of Technology.

[7] On or about June 23, 2016, the Appellant applied to the Safety Authority to write an examination to obtain his certificate of qualification as a Class A Electrical FSR.

[8] The role of an FSR is to inspect regulated electrical work in the province. Because the Safety Authority does not have sufficient resources to inspect all such work, these inspections are often approved by the Safety Authority based on a declaration of compliance prepared by an FSR rather than a physical inspection conducted by a representative of the Safety Authority.

[9] A certification for an FSR can be granted by the Safety Authority in one of three classes. Class A is the highest FSR designation and holders of this certification may make declarations for any type of electrical work.

[10] The ESR establishes the requirements for professional engineers seeking the FSR designation as follows:

6. Only the following individuals are eligible to apply for a certificate of qualification as a Field Safety Representative:

- (a) an individual referred to in Section 4(1)(a)(2)(c);
- (b) an applied technologist referred to in Section 9(1); and
- (c) a professional engineer referred to in Section 10(1)

Section 10 of FSR provides:

10(1) an individual who holds qualifications in electrical engineering and is a member in good standing with the Association of Professional Engineers and Geoscientists of British Columbia may apply to a provincial Safety Manager to obtain a certificate of qualification as a field safety representative in one of the classes of certificate of qualifications as a field safety representative referred to in Section 7 if the individual passes an examination required by the provincial Safety Manager.

(2) a professional engineer who applies for a Class A or Class B certificate of qualification as a Field Safety Representative must have two years of work experience acceptable to a Provincial Safety Manager.

[11] On June 27, 2016, the Safety Authority advised the Appellant that he did not meet the requirements to write the exam and to apply for the FSR designation because he did not hold a degree in electrical engineering. The Safety Manager concluded that without this degree the Appellant did not hold "qualifications in electrical engineering", as that term is used in Section 10(1) of the ESR.

[12] The Appellant confirmed that his engineering degree was as a mechanical engineer but he submitted that his 20 years of work experience with substations and switch gear coupled with the fact that APEGBC considered him able to practice in the field of electrical engineering constituted compliance with the requirement to hold a qualification in electrical engineering.

[13] The Provincial Safety Manager undertook a further review of the Appellant's application. In an Affidavit filed in this appeal by a Provincial Safety Manager, He deposes that:

- a. He did not consider a degree in mechanical engineering to meet the requirements for qualifications in electrical engineering;
- b. APEGBC allows its members to self-designate their expertise and does not bestow degrees or qualifications in any particular field;
- c. the Appellant's experience is limited to the field of power generation/distribution; and
- d. the breadth of the Appellant's education is not the equivalent of a degree in electrical engineering nor is his practical experience sufficiently broad enough to include all types of the regulated electrical work.

ANALYSIS

[14] As a preliminary matter the Respondent submits that the Board has no jurisdiction to hear this Appeal and accordingly it must be summarily dismissed. The Respondent says that in determining this Appeal the Board will be called upon to interpret Section 10 of the ESR and if the Appeal were granted, the Board would effectively be contravening a provincial enactment.

[15] The Board respectfully disagrees with the Respondent's Submission. The issue on Appeal is whether the Safety Manager has correctly interpreted Section 10 of the ESR. The Safety Manager's decision is reviewable by the Board pursuant to Sections 49(1) of the *Act* and the Board is given exclusive jurisdiction in undertaking that review as per Section 60(1) of the *Act*.

[16] Accordingly, the Board finds that the issues raised in this Appeal are entirely within its jurisdiction.

[17] The powers of the Safety Manager are set out in Section 15 of the *Act*. The relevant provision is as follows:

15. A Provincial Safety Manager may exercise any or all of the powers of a Safety Officer and may do one or more of the following:

(I) evaluate the qualifications of a person who applies for a license, certificate, or other permission under this *Act*.

[18] The *Act* sets out the requirements for issuing a certificate of qualification:

26(1) An individual who wishes to be certified as qualified to perform regulated work may, in accordance with the regulations, apply to a Provincial Safety Manager for a certificate of qualification in one or more disciplines as defined in the regulations under Section 2(1)(c).

2) An Applicant who pays the required application fee and meets the requirements of the regulations for a certificate of qualification must be issued a Certificate of Qualification in each discipline for which the Applicant is qualified.

3) A provincial Safety Manager must examine the Applicant's qualifications and determine their level or category of qualification and for that purpose may devise and administer tests.

4) If, in the opinion of a provincial Safety Manager, the Applicant does not meet the requirements under the regulations for a certificate of qualification, the provincial Safety Manager must give the Applicant written notice of that decision.

5) The notice must state the reasons for the decision and that the Applicant has the right to appeal the decision to the Appeal Board.

[19] Section 2 of the Safety Standard's General Regulation is also relevant to this Appeal:

2. An applicant for a certificate of qualification must pay any required fees and subject to the regulation's respecting the particular discipline:

- a. provide proof acceptable to a provincial Safety Manager, of the applicant's relevant training and work experience; and
- b. pass any required examination for that certificate.

[20] In the Board's view, the foregoing sections clearly give the Safety Manager the power to evaluate whether the Appellant holds the necessary qualifications for the FSR designation and the discretion to consider and weigh the academic training and work experience to determine if it is satisfactory to the Safety Manager.

[21] The provisions of the Act provide that a certificate of qualification must be issued by the provincial Safety Manager but only after the Safety Manager has examined an applicant's qualifications and, "in the opinion of a provincial Safety Manager", met those requirements.

[22] There is broad discretion in the legislation given to the Safety Manager in making that assessment.

[23] The Safety Manager in this instance has concluded that the requirement in Section 10 for qualifications in electrical engineering means that applicants must hold a university degree in electrical engineering.

[24] The Appellant says that Section 10 does not specifically refer to a degree in electrical engineering but the Board finds that the Safety Manager's interpretation of Section 10 as requiring a degree in electrical engineering is well within the discretion granted to the Safety Manager in these circumstances. The Act gives the Safety Manager the discretion to determine what is and is not an appropriate qualification and the Safety Manager has determined that this is a university degree in electrical engineering.

[25] Implicit in the Appellant's Submissions is the assertion that while he does not hold a degree in electrical engineering, he has demonstrated that he holds the equivalency of a degree in electrical engineering. In this regard he relies on two arguments. The first is that virtually the whole of his work experience has been in the field of electrical power generation relating to infrastructure. Secondly, he says that APEGBC, the Regulator of Professional Engineers in British Columbia, allows him to hold himself out as an electrical engineer.

[26] Considering the first of these arguments the Board notes that the requirements set out in Section 10 of the ESR for Professional Engineers contemplate both qualifications in electrical engineering and satisfactory work experience. Work experience alone, even if it is in the field of electrical engineering is not sufficient in the Board's view since the legislation requires qualifications in addition to work experience. The term qualification must have a meaning different than work experience. The Safety Manager's determination that this qualification must be a University Degree is reasonable when one considers that the Act gives the Safety Manager the discretion to evaluate the Appellant's qualifications.

[27] The second argument raised by the Appellant is that his declared expertise in the field of electrical engineering, which is permitted by the APEGBC, should be taken to be evidence of qualifications in electrical engineering.

[28] There is scant evidence on this Appeal from APEGBC and certainly none that go so far as to say that the Appellant holds the equivalent of a university degree in electrical engineering.

[29] It is apparent that the APEGBC allows the Appellant to self-declare that he has expertise in the field of electrical engineering but that they are relying on their members to limit their practise to areas in which the member feels he or she are qualified. There is some evidence that APEGBC did undertake a detailed review of the Appellant's experience and academic background before he was permitted to declare his expertise in electrical engineering. The July 6, 2016 communication from the Manager, Examinations, Geoscience Registration and Member in Training Program at APEGBC states:

"We can also confirm that your application was through the discipline of electrical engineering and after detailed review, you were licensed and deemed qualified to practise in that area. Due to the diverse and ever changing nature of the field of engineering, especially with the overlapping of certain disciplines, we do not necessarily license an individual as an Electrical Engineer, or a Civil Engineer, or Computer, etc. We register people through a discipline, but once licensed the onus is on the practitioner to only practise in an area they feel they are qualified for based on a combination of their academic and experience background."

[30] Considering this declaration from APEGBC and the Safety Manager's Affidavit which states that his review determined that the Appellant's academic and work experience were not sufficiently broad enough to encompass all aspects of regulated electrical work, since his experience was confined solely to power generation, the Board finds that there is insufficient evidence in this Appeal to indicate that the Safety Manager has improperly interpreted the requirements of Section 10 of the ESR or otherwise failed to exercise his discretion in a reasonable manner.

[31] This is not to say that the Appellant is not a competent and professional Engineer with experience in certain aspects of electrical design work. He clearly has significant practical experience. However, the Board finds that the Provincial Safety Manager properly exercised his discretion in assessing the Appellant's academic qualifications and work experience when he made his determination that the Appellant did not currently meet the requirements to write the examination for a Class A FSR Certification.

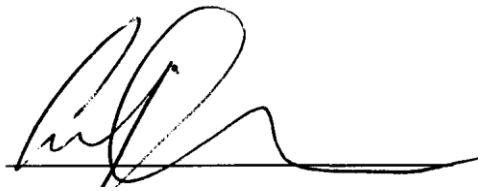
CONCLUSION

[31] The Appeal is dismissed.


Signed;

A handwritten signature in black ink, appearing to read "J. Hand", written in a cursive style.

Jeffrey A. Hand, Vice-Chair

A handwritten signature in black ink, appearing to read "Emily Drown", written in a cursive style.

Emily Drown, Chair

A handwritten signature in black ink, appearing to read "Ted Simmons", written in a cursive style.

Ted Simmons, Panel Member